



U S Army Corps
of Engineers
Huntington District

Public Notice

In reply refer to Public Notice No. 200000063-1	Issuance Date: March 16, 2007
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Stream: N/A	Closing Date: March 16, 2012
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Please address all comments and inquiries to:
U.S. Army USACE of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5710

REGIONAL PERMIT FOR STREAM RESTORATION ACTIVITIES TO BE PERFORMED BY THE WEST VIRGINIA CONSERVATION AGENCY WITHIN THE HUNTINGTON DISTRICT IN WEST VIRGINIA

PUBLIC NOTICE: The purpose of this public notice is to inform you of the re-issuance of the above referenced regional permit.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: In accordance with Title 33 CFR 322.2 (f), 323.2(h), and 325.2(e)(2) published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer, U.S. Army Corps of Engineers, Huntington District, has re-issued a regional permit for stream restoration activities to be performed by the West Virginia Conservation Agency (WVCA) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

BACKGROUND: The West Virginia Conservation Agency (WVCA) provides assistance to public or private landowners in alleviating hazards to life and property resulting from sudden watershed impairment. This work typically requires the discharge of dredged or fill material into waters of the U.S. and therefore requires authorization from the Corps of Engineers (Corps) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The purpose of this Regional Permit is to expedite authorizations for the WVCA to perform projects for the purposes of alleviating hazards to life and property. Such projects would include debris and deposition removal, bank stabilization, stream erosion repair, restoration of stream channel geometry and alignments, and minor repair, or maintenance of existing roads, bridges or utilities. Authorization would apply to all streams within the Huntington District in West Virginia, except those excluded by special and general permit conditions, or conditions imposed by the state water quality certification.

The following information will be provided to the Corps' Huntington District concerning each project, prior to initiation of restoration work:

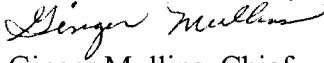
- (1) Name of the property owner;
- (2) Exact location of the work, including location map on U.S.G.S. 7.5 Minute Series Quadrangle, Latitude and Longitude;
- (3) Project plan view and cross sectional view depicting boundaries of waters of the U.S. and boundaries of proposed work;
- (4) Brief description of all work proposed;
- (5) Amount of material to be discharged into waters of the U.S. expressed in linear feet or acres, in addition to volume of material proposed to be discharged expressed in cubic yards; and
- (6) Any other appropriate information, such as compliance with Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act (NHP)

The WVCA is responsible for ensuring the work is performed in accordance with the terms and conditions of the permit. Work performed under this authorization can be suspended, modified or revoked in accordance with 33 CFR 325.7 if a later determination is made by the Corps that the information provided was inaccurate, incomplete or done in bad faith. In the event of such a determination, enforcement action may be initiated.

WATER QUALITY CERTIFICATION: A copy of the required Section 401 Water Quality Certification for this Regional Permit is attached. The policies of this Regional Permit are subject to review and reconsideration at any time. At a minimum of every five years, this Regional Permit will undergo a comprehensive reevaluation in accordance with the regulations governing the establishment and use of regional permits.

For further information contact:

U.S. Army Corps Engineers
Attn: CELRH-OR-FS
502 Eighth Street
Huntington, West Virginia 25701-2070.


Ginger Mullins, Chief
Regulatory Branch

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**Special Conditions for Stream Restoration Activities to be
Performed by the West Virginia Conservation Agency**

- a. The permit will apply only in counties declared to be disaster areas by the Governor of West Virginia for the specific sudden watershed impairment.
- b. Notice shall be given to resource agencies, including: the West Virginia Department of Environmental Protection (WVDEP), U.S. Fish and Wildlife Service (USFWS), and West Virginia Division of Natural Resources (WVDNR) inviting them to field reviews of proposed exigency projects. At the earliest possible date, WVCA shall provide location and construction details of exigency projects to the resource agencies. For non-exigency projects the WVCA shall invite resource agencies to the field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 15 days prior to initiation of work.
- c. The maximum length of a single and complete project per landowner is limited to 150 meters, unless approved during a site review by resource agencies.
- d. The work shall be performed in an environmentally, technically, and economically sound manner. For non-exigency projects, Natural Stream Channel Design principles shall be incorporated into project designed to the maximum extent practicable. Only clean, uncontaminated material will be used. Acceptable materials include durable stone and concrete rubble. Any reinforcing rods extending from rubble must be cut flush with the concrete surfaces. Blast furnace slag, asphalt, wood, waste metal, bituminous pavement, solid waste, glass and ceramic wastes, tires, appliances, automobile bodies, and other deleterious materials are not acceptable.
- e. In stream work will be limited to that absolutely necessary for completion of restoration activities.
- f. Any project or portion of a project authorized by this permit, involving repair activities, shall be critically reviewed in the field by resource, regulatory, and construction agencies to assess likely causes of current failure and to seek concurrence on any appropriate measures to prevent future failure.
- g. Exigency work under this regional permit will require notification to the Fish and Wildlife Service. Due to potential for adversely affecting threatened or endangered species, this permit will not apply to non-emergency (non-exigency) work in the following waters:

Upper Kanawha River (Kanawha Falls-Watson Island, River Mile 75.5) (Kanawha and Fayette Counties) (Tubercled-blossum pearlymussel, Epioblasma torulosa torulosa; Pink mucket pearlymussel, Lampsilis abrupta; and Fanshell, Cyprogenia stegaria)

Elk River (Sutton Dam - slackwater below Coonskin Park) (Braxton, Clay, Kanawha Counties) (Clubshell, Pleurobema clava; Northern riffleshell, Epioblasma torulosa rangiana; and the Pink mucket pearlymussel, Lampsilis abrupta)

Ohio River (Upper Greenup, R.C. Byrd, Racine, and Belleville Navigation Pools) (Cabell, Mason, Jackson, and Wood Counties) (Pink mucket pearly mussel, Lampsilis abrupta and the Fanshell, Cyprogenia stegaria)

Hackers Creek of the West Fork River (Lewis County) (Clubshell, Pleurobema clava)

Meathouse Fork of Middle Island Creek (Doddridge County) (Clubshell, Pleurobema clava)

Middle Island Creek (Doddridge, Tyler, and Pleasants Counties) (Clubshell, Pleurobema clava)

South Fork of the Hughes River (Ritchie County) (Clubshell, Pleurobema clava)

Potts Creek and the South Fork of Potts Creek (Monroe County) (James spinymussel, Pleurobema collina)

Greenbrier River (Greenbrier County) (Virginia spiraea, Spiraea virginiana)

Lower Gauley River (Summersville Dam - Swiss) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)

Lower Meadow River (Nallen - Gauley River) (Nicholas and Fayette Counties) (Virginia spiraea, Spiraea virginiana)

Bluestone River (Bluestone Gorge - slackwater Bluestone Reservoir) (Mercer and Summers Counties) (Virginia spiraea, Spiraea virginiana)

Dingess Branch and Millers Camp Branch of Marsh Fork and associated palustrine emergent and scrub-shrub wetlands (Raleigh County) (Virginia spiraea, Spiraea virginiana)

- h. For non-exigency projects, the WVCA will invite resource agencies to the field reviews and provide WVDNR and USFWS construction and location details for review a minimum of 30 days prior to initiation of work on streams supporting protected freshwater mussels. The most current list is available from the Inter-Agency Coordination Supervisor, WVDNR, P.O. Box 67, Elkins, West Virginia, 26241. A list of these streams current as of this correspondence follows.

Kanawha Drainage

Kanawha River, Coal River, Elk River (downstream Webster Springs), Big Sandy River, New River, Bluestone River, Greenbrier River, East and West Forks of Greenbrier, Indian Creek of Greenbrier, Pocatalico River

Little Kanawha Drainage

Little Kanawha, Hughes River, North and South Fork Hughes, Steer Creek, Cedar Creek, Leading Creek, Reedy Creek, Spring Creek, Spruce Creek, Henry's Fork, Goose Creek

Middle Island Drainage

Middle Island Creek, Meathouse Fork (below Indian Fork at Avon in Doddridge County), Buckeye Creek

Monongahela Drainage

Dunkard Creek, West Fork River, Hackers Creek, Kincheloe Creek

Mud River Drainage

Mud River, Trace Fork, Middle Fork

Potomac Drainage

Cacapon River (below Wardensville), North River of Cacapon, Patterson Creek, Opequon Creek

Others

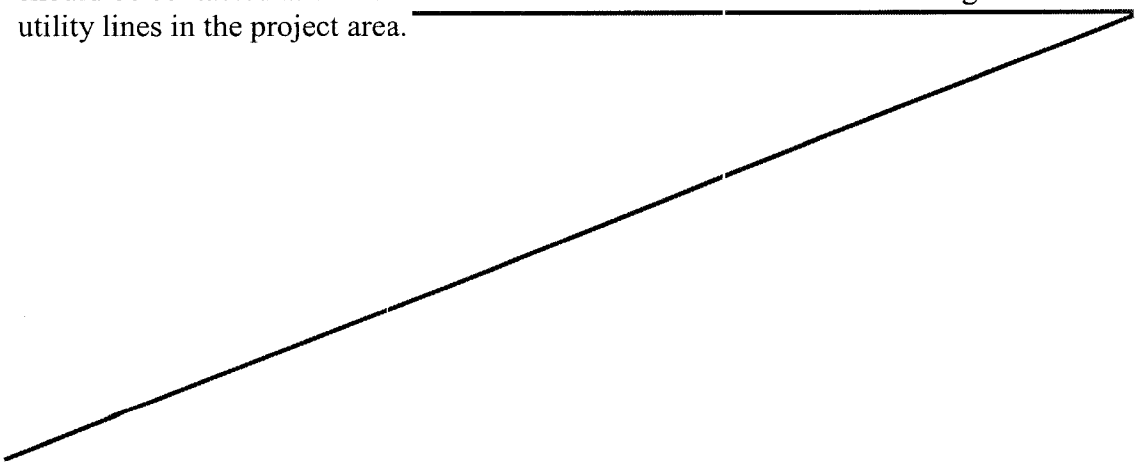
Twelvepole Creek and Beech Fork, Hurricane Creek, Tug Fork, Wheeling Creek, Fishing Creek, South Fork Potts Creek, Mill Creek (Jackson County)

i. For low bedload streams, stabilization will typically consist of the placement of random large boulders situated along the toe of the stream bank at a rate of one per 5 meters, or other rate determined to be appropriate given site conditions. For high bedload streams, random boulder placement frequently results in aggradation and increases in stream bank shear stress. Therefore, for high bedload streams, the WVCA should contact WVDNR for technical assistance in accessing proper stabilization. Revegetation must include seeding and mulching of all disturbed areas and the establishment of permanent vegetative cover as deemed appropriate. Planting of native shrub and/or tree seedlings along the top of the bank (1 seedling per 2 meters) is strongly encouraged. Only native vegetation will be used in the re-vegetation of projects within the confines of the National park system. Native vegetation may be used in other areas where feasible and under conditions which provide bank stabilization in support of stream restoration.

j. A copy of this permit must be posted on-site during construction activities.

k. This regional permit will not authorize:

1. Normal operation and maintenance activities;
2. Problems that existed prior to the disaster;
3. Channel modification that increases the pre-disaster capacity, including the construction of dikes;

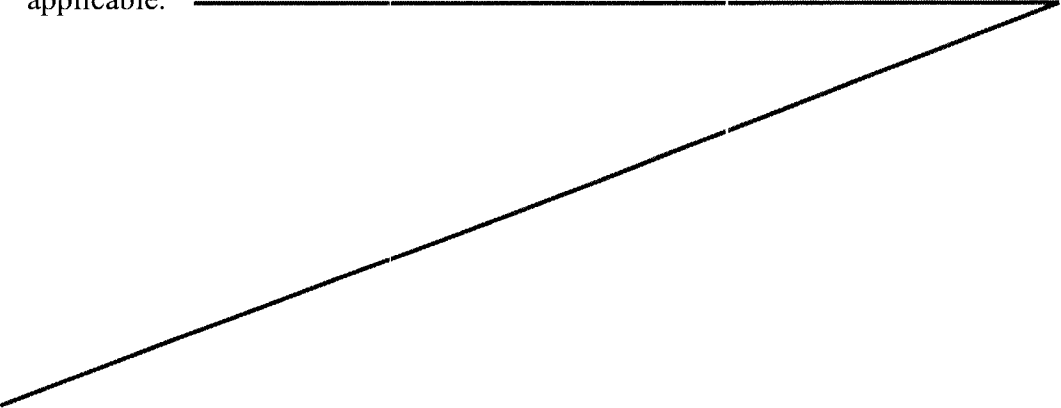
4. Repair, construction or maintenance of “rock piles” that are not constructed in accordance with approved dike criteria;
 5. Projects where, following on-site review, the Conservation Agency and the resource agencies are in disagreement over construction methods or mitigative measures. These projects must be authorized by individual permit;
 6. Activities that would affect historic, cultural or archaeological sites listed or eligible for listing in the National Register of Historic Places, unless coordination as required by section 106 of National Historic Preservation Office and the Advisory Council on Historic Preservation. The WVCA will contact the WV Division of Culture and History to determine if historic, cultural or archaeological sites have been listing on the National Register;
 7. Activities at sites that may affect proposed or listed endangered species or their designated critical habitat, unless consultation under Section 7 (c) of the Endangered Species Act has been completed. The WVCA will contact the U.S. Fish & Wildlife Service to determine if listed or proposed site;
 8. Fills in designated components of the National or State Wild and Scenic Rivers Systems, Federal or State designated wildlife management areas or at sites included in the National Registry of Natural Landmarks will not be authorized, unless approval is granted from the administering agency;
 8. Work proposed in Nationwide Rivers Inventory streams unless coordinated with the National Park Service. Inventory Rivers within the Huntington District include: Cherry River, South Fork of Cherry River, North Fork of Cherry River, Cranberry River, Elk River, Left Fork of Elk River, Gauley River, Greenbrier River, East Fork of Greenbrier River, West Fork of Greenbrier River, Holly River, Left Fork of Holly River, Hughes River, North Fork of Hughes River, Laurel Fork, Little Kanawha River, Mud River and New River;
 10. Prior to commencement of stream restoration work, Miss Utility of West Virginia should be contacted at 1-800-245-4848 to determine the location of underground utility lines in the project area.
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**General Conditions for Stream Restoration Activities to be
Performed by the West Virginia Conservation Agency**

- a. If any previously unknown historic or archaeological remains are discovered while accomplishing the activity authorized by this permit, notification must immediately be provided to this office of what has been found. The Corps of Engineers will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort if the site is eligible for listing in the National Register of Historic Places.
- b. Representatives from the Corps of Engineers will be allowed to inspect the authorized activity at any time deemed necessary to insure that it is being or has been accomplished in accordance with the terms and conditions.
- c. Further information
 1. Congressional Authorities. This activity has been authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.
 2. Limits of this authorization.
 - (a) This Permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
 3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.

- (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that the activity is not contrary to the public interest was made in reliance on the information you provided pursuant to the notification requirement. Any change to the description may make the project ineligible for authorization by this regional permit.
 5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) Failure to comply with the terms and conditions of this permit.
 - (b) If information provided in support of the project description is false, incomplete, or inaccurate.
 - (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract to otherwise and bill the proponent for the cost.

6. Consent to easement over and under lands identified as flowage is attached, if applicable. _____
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west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street SE
Charleston, WV 25304
Telephone Number: (304) 926-0495
Fax Number: (304) 926-0496

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

November 17, 2006

Ms. Ginger Mullins
Chief, Regulatory Branch
Huntington District, Corps of Engineers
502 Eighth Street
Huntington, West Virginia 25701-2070

Re: Public Notice 200000063-1, Water Quality Certification, Regional Permit for Stream Restoration Activities to be Performed by the West Virginia Conservation Agency within the Huntington District in West Virginia.

Dear Ms. Mullins:

The West Virginia Department of Environmental Protection-Division of Water and Waste Management (WVDEP-DWWM), in conjunction with the West Virginia Division of Natural Resources - Wildlife Resources Section (WVDNR-WRS), has completed review of the Public Notice No. 200000063-1, Proposed Regional Permit for Stream Restoration by the West Virginia Soil Conservation Agency (WVCA) within the Huntington District in the State of West Virginia.

The regional permit will be used by the West Virginia Conservation Agency (WVCA) to provide assistance to public or private landowners in alleviating hazards to life and property resulting from sudden watershed impairment. The purpose of this Regional Permit is to expedite authorization for the WVCA to perform projects for the purposes of alleviating hazards to life and property. Such projects would include debris and deposition removal, bank stabilization, stream erosion repair, restoration of stream channel geometry and alignments, and minor repair or maintenance of existing roads, bridges or utilities.

The West Virginia Conservation Agency (WVCA) has over the past few years shifted its philosophy regarding stream restoration. Historically, in the aftermath of floods, the emphasis of the agency was to restore channel capacity to pre-flood conditions by removing blockages and/or

Promoting a healthy environment.

increasing channel capacity by aggressive dredging of the channel. These actions were sometimes detrimental to sediment transport. As a consequence, the "restored" channel was unstable and often quickly filled with sediment thus reducing capacity and habitat. The WVCA has committed significant resources in providing training for its staff in the science of Natural Stream Channel Design (NSCD). After floods, the WVCA still routinely removes large debris deposits in streams as a component of its stream restoration efforts. However, the WVCA now looks for opportunities to utilize NSCD to improve sediment transport and improve altered and degraded aquatic habitats. The WVDEP-DWWM and WVDNR commends these improvements to the WVCA Stream Restoration Program.

We request that for non-exigency projects, the WVCA invite resource agencies to the field reviews and provide WVDNR construction and location details for review a minimum of 30 days prior to initiation of work on streams supporting protected freshwater mussels. The most current list is available from the Inter-Agency Coordination Supervisor, WVDNR, P.O. Box 67, Elkins, West Virginia, 26241. A list of these streams current as of this correspondence follows.

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Others

Twelvepole Creek and Beech Fork, Hurricane Creek, Tug Fork, Wheeling Creek, Fishing Creek, South Fork Potts Creek, Mill Creek (Jackson County)

Ms. Ginger Mullins

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November 17, 2006

State 401 Certification, as required by the Clean Water Act, is granted. Certification shall be effective fifteen (15) days after receipt unless appealed under title 47, Series 5A, Section 7 of the Code of State Regulations, State Certification of Activities Requiring a Federal Permit. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It should be directed to: Director, Division of Water and Waste Management, West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304: ATTENTION: 401 Certification Program.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa A. McClung". The signature is fluid and cursive, with the first name "Lisa" and last name "McClung" clearly distinguishable.

Lisa A. McClung, Director

LAM/wir

Cc: Mr. Gene Saurborn
West Virginia Conservation Agency
201 Scott Avenue
Morgantown, West Virginia 26508
U.S. Environmental Protection Agency - Jessica Martinsen
U.S. Fish and Wildlife Service - Tom Chapman
WVDNR-Wildlife Resources Section, Elkins - Roger Anderson
WVDEP-DWWM, Regulatory Review Program - Lyle Bennett